IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.437 OF 2006

IN

BOMBAY CITY CIVIL COURT S.C.SUIT NO.3295 OF 2001

WITH

CIVIL APPLICATION NO.547 OF 2006

Sai Samrat Security Service & Ors. ...Appellants

Versus

Rizvi Builders & Ors. ...Respondents

.....

Mr.M.P.Vashi i/b M/s.M.P.Vashi & Associates

for Appellants.

Mr.Nihar Ghag with Mr.M.J.Shetty for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

JULY 6, 2006.

P.C.

1. Heard Counsel for the parties.

2. Admit. Mr.Shetty waives notice for Respondents. He undertakes to file Vakalatnama on behalf of Respondents.

3. As short question is involved, Appeal is taken up for final hearing forthwith, by consent.

4. This Appeal from Order takes exception to the Judgment and Order passed by the Trial Court dated March 10, 2006 in S.C. Suit No.3295 of 2001 under Order VII Rule 10 of the Code of Civil Procedure returning the plaint to the Plaintiffs for being presented before the appropriate Court. The sole basis on which this order has been passed can be discerned from Paragraphs 11 and 15 of the impugned Judgement. Before I advert to the said aspect, it will be apposite to reproduce the substantive relief claimed by the Plaintiffs in the said suit. The same read thus:

> "17. The plaintiffs will rely upon the documents, a list whereof is annexed hereto.
>
> That plaintiffs, therefore, pray:-
>
> (a) That the defendants, their servants, agents and employees be prevented by a permanent and temporary injunction of this Hon'ble Court from disturbing the plaintiff's possession of the said premises, viz: Room No.2 at 94, Kadri

Park, S.V. Road, Irla, Vile Parle (West), Mumbai- 400 056, without due process of law.

(b) That pending the hearing and final disposal of the suit, the defendants, their servants, agents, employees, contractors and hirelines be prevented by an order and injunction of this Hon'ble Court from disturbing the possession of the plaintiffs in respect of the suit premises, viz: the premises at 2/94, Kadri Park, S.V. Road, Vile Parle (West), Mumbai - 400 056, without due process of law.

(c) That pending the hearing and final disposal of the suit, an advocate or any other officer or a fit and proper person be appointed as commissioner to visit the suit premises and make an inventory of articles and things lying in the premises and submit a report to this Hon'ble Court.

(d) That the Sr.Inspector of Police, Juhu Police Station, Mumbai - 49 and his subordinates may be ordered and directed to assist the plaintiffs in enforcing the injunction and other orders that may be granted by this Hon'ble Court.

(e) That ad-interim reliefs in terms of prayers (b), (c) and (d) be granted.

(f) That the costs of the suit be provided for.

(g) such other and further reliefs be granted as the court may deem fit to grant."

5. The Trial Court accepted the stand taken on behalf of the Respondents that the suit in

substance is on the basis of claim of the Plaintiffs to recover sum of Rs.2,93,000/- (Rupees Two Lakhs Ninety-three Thousand) from the Respondents/Defendants which was due and payable in the first week of June 1999. If so understood, the Suit will have to be valued on that basis, though simplicitor for relief of injunction, in which case, the City Civil Court will have no jurisdiction. The Court below has accepted the stand of the Respondents that the Suit would fall within the provisions of Article 7 of Schedule I of Bombay Court Fees Act and not under Section 6(iv)(j) thereon.

6. After hearing the Counsel for the parties and perusing the Plaint, in my opinion, the reason recorded by the Trial Court cannot be sustained having regard to the frame of the Suit. The substantive relief claimed in the Suit is simplicitor for injunction against the Defendants not to disturb their possession without due process of law. Indeed, the Plaintiffs claim to be in possession of the suit premises in view of the arrangement arrived at between the parties and that

the Plaintiffs were entitled to claim sum of Rs.2,93,000/- (Rupees Two Lakhs Ninety-three Thousand) due and payable in the first week of June 1999. However, the frame of the suit and the cause of action as spelt out in Paragraph 11 of the Plaint would clearly indicate that the Plaintiffs claim to be in possession of the suit property and on that basis, substantive relief of injunction against the Defendants not to disturb their possession without due process of law is claimed.

7. If such is the relief claimed, it is inconceivable that such a plaint will fall within Article 7 of Schedule I of the Bombay Court Fees Act. The reason recorded by the lower Court that as the Plaintiffs have failed to take leave under Order II Rule 2 of the Code of Civil Procedure, it will have to be assumed that it was a suit for claim of certain amounts, to say the least, is inappropriate. If the Plaintiffs have failed to seek leave under Order II Rule 2, that does not mean that the Plaintiffs are seeking relief of recovery of amount which is due and payable to them. If that leave is not sought, the

consequences thereof will follow but that does not mean that the suit as instituted by the Plaintiffs will become one for recovery of amounts due and payable to the Plaintiffs.

8. Counsel for the Respondents placed reliance on two decisions to contend that in such a case the Court will have to assume that the Suit is one covered by Article 7 Schedule I and not by Section 6(iv)(j) of the Act. Reliance is placed on the decision of the Supreme Court in the case of **Southern Roadways Ltd., Madurai vs. S.M.Krishnan reported in AIR 1990 SC 673**. This decision in my opinion, is of no avail to the point in issue. This decision deals with the proposition that when the agency is terminated, the agent has no right to remain in possession, for which reason, not entitled for relief of injunction. That question may be relevant in the Motion for temporary injunction. That cannot be the basis to answer the point in issue as to whether the City Civil Court has jurisdiction to try and decide the suit as instituted.

9. Reliance is then placed on the decision of the Apex Court in the case of **Corporation of the City of Bangalore v. M.Papaiah & Anr. reported in AIR 1989 SC 1809.** I fail to understand how this decision has any relevance to the fact situation of the present case, in particular, the issue relating to return of plaint on the ground of pecuniary jurisdiction, which is the order put in issue. Understood thus, it is not possible to sustain the impugned order passed by the Trial Court.

10. Accordingly, this Appeal succeeds. The impugned Judgment and Order is set-aside. Instead, the Trial Court is directed to proceed with the Suit in accordance with law.

11. As Counsel for the parties submit that the pleadings are complete and matter can proceed for trial, having regard to the nature of controversy involved, it will be open to the parties to approach the Trial Court for expeditious hearing of the Suit. The Trial Court may consider that request appropriately. Parties are directed to appear before the Trial Court on 24th July 2006, on

which date, Trial Court may assign next date of hearing.

12. Appeal and the cognate Civil Application disposed of on the above terms.

A.M.KHANWILKAR, J.